9-21-1993

State of New York Public Employment Relations Board Decisions from September 21, 1993

New York State Public Employment Relations Board

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Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

2A- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF NASSAU **CASE NO. S-0002**

for a determination pursuant to
Section 212 of the Civil Service Law.

BOARD DECISION AND ORDER

Pursuant to §212 of the Civil Service Law (CSL), the County of Nassau (County) has submitted an application by which it seeks a determination that County Ordinance No. 549-1981, as amended on August 9, 1993, by Ordinance No. 312-1993, is substantially equivalent to the provisions and procedures set forth in CSL Article 14 with respect to the State. The amendment brings the County's local law into conformity with CSL §209.2 and CSL §209.4 as amended by Chapter 485 of the Laws of 1990 and Chapter 723 of the Laws of 1991, by extending compulsory interest arbitration to detective investigators and criminal investigators employed in the office of the district attorney.

Having reviewed the application, and having determined that the subject local law, as amended, is substantially equivalent to the provisions and procedures set forth in CSL Article 14 with respect to the State,

IT IS ORDERED that the application of the County of Nassau be, and it hereby is, approved.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

2B- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, NASSAU LOCAL 830, AFSCME, LOCAL 1000, AFL-CIO,

Charging Party,

-and-

CASE NO. U-10629

COUNTY OF NASSAU,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (JEROME LEFKOWITZ of counsel), for Charging Party

BEE & EISMAN (PETER A. BEE of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Civil Service Employees Association, Nassau Local 830, AFSCME, Local 1000, AFL-CIO (CSEA) to a decision by an Administrative Law Judge (ALJ) dismissing its charge that the County of Nassau (County) violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it changed the procedures for scheduling unit employees' vacation time.

The charge in issue involves the procedures for granting vacation days, or fractions thereof, on a request-by-request basis. Until September 1988, requests could be made at any time to the tour commander who would consider the request in light of staffing needs. By Sheriffs' Order Number: 31-88, unit employees in the Security Unit of the Sheriffs' Department had to submit their requests to the personnel office at least seventy-two hours before the date or dates requested.

The ALJ decision now on appeal follows our reversal and remand of the ALJ's earlier decision.[1/] On remand, the ALJ granted the County's motion to dismiss the charge on the ground that §9-2.2 of the parties' contract permitted the County's action and waived any further right of CSEA to negotiate. Under that section of the contract, the County has the right to "promulgate departmental practices, procedures, rules and regulations" so long as under §5 of the contract they do not "conflict with, exceed nor supersede this Agreement".

CSEA argues that the several other decisions relied upon by the ALJ in which we found a waiver by agreement[2/] did not involve an interpretation of §9-2.2, but of the County's rights under a management rights clause which gave the County the right to regulate work schedules. CSEA argues, therefore, that the ALJ's reliance on those cases is misplaced. Section 9-2.2 of the contract, according to CSEA, gives the County the right only to promulgate rules affecting internal management practices and procedures and is too broad to constitute a waiver of any bargaining rights regarding terms and conditions of employment.

[1/]In our first decision in this case, we reversed the ALJ's dismissal of the charge for lack of jurisdiction and, alternatively, as untimely filed. 23 PERB ¶3051, rev'g 23 PERB ¶4550 (1990). We did not, however, have before us then any issue regarding the merits of either CSEA's or the County's allegations. Therefore, contrary to CSEA's argument, there is nothing in our decision remanding the case to the ALJ suggesting any disposition on the issue of whether CSEA waived the right to negotiate vacation scheduling procedures.

[2/]See cases reported at 24 PERB ¶3027 (1991); 18 PERB ¶3034 (1985); 13 PERB ¶3053 (1980); 12 PERB ¶3105 (1979); and 12 PERB ¶3049 (1979).

The County argues in its response that the ALJ reached the correct conclusion of law and that her decision should be affirmed.

For the reasons set forth below, we affirm the ALJ's decision. In affirming the ALJ's decision, however, we find it unnecessary to consider the meaning or effect of §9-2.2 of the parties' contract.

It is well-established that a duty to bargain regarding terms and conditions of employment can be satisfied and any further right to bargain regarding those subjects can be waived by agreement of the parties. The question presented, therefore, is whether the language of the parties' contract establishes a sufficiently plain and clear grant of right to the County to change procedures affecting employees' vacation time, and thereby effect a corresponding waiver of CSEA's bargaining rights. In that regard, §42-4(a) of the parties' contract provides that "vacation time shall be granted only in accordance with the administrative needs of the department." The parties did not offer any evidence regarding the meaning or history of any of the relevant contract provisions. We are, therefore, required to discern the parties' intent from the language of the contract alone. As written, §42-4(a) gives the County the right to grant vacation time consistent with its administrative needs. In the absence of evidence defining "administrative needs", the term must be interpreted in its ordinary sense, and is, thus, a broad

grant of power to the County. The departmental rule requiring three days' advance notice to its personnel department is not inconsistent with the County's perception of its administrative needs. Therefore, the scheduling changes effected by the departmental order in issue were covered by the language and agreement embodied in §42-4(a).

Our affirmance of the ALJ's decision is entirely consistent with our view that general, nonspecific management rights clauses or zipper clauses do not usually constitute effective waivers of bargaining rights in the context of an employer's unilateral change of a term and condition of employment.[3/] The County's right to assign vacation times, only to the extent the grant is consistent with its administrative needs, is no less specific than its right to regulate work schedules, the latter of which, as already noted,[4/] has been found by us to establish a waiver of bargaining rights regarding a number of different changes in employees' work schedules.

For the reasons set forth above, CSEA's exceptions are denied and the ALJ's decision is affirmed.

[3/]See, e.g., County of Onondaga, 77 A.D.2d 783, 13 PERB ¶7011 (4th Dep't 1980), conf'g 12 PERB ¶3035 (1979); Onondaga-Madison BOCES, 13 PERB ¶3015 (1980).

[4/]See cases cited supra note 2.

IT IS, THEREFORE, ORDERED that the charge be, and it hereby is, dismissed.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

20- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ALFRED A. DEGALL,

Charging Party,

-and-

CASE NO. U-13458

STATE OF NEW YORK (EMPLOYEE HEALTH SERVICES and DEPARTMENT OF TRANSPORTATION),

Respondent.

USHER PILLER, for Charging Party

WALTER J. PELLEGRINI, GENERAL COUNSEL (RICHARD W. McDOWELL of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Alfred A. Degall to a decision by an Administrative Law Judge (ALJ). After a hearing, the ALJ dismissed Degall's charge against the State of New York (Employee Health Services and Department of Transportation) (State) which claims that the State violated §209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act) when it required him to submit to a psychiatric examination allegedly in retaliation for his participation in a grievance meeting on September 3, 1991.

The ALJ found that the State was not improperly motivated in ordering Degall to submit to a psychiatric examination pursuant to §72 of the Civil Service Law. The ALJ found that the State had decided before Degall's involvement in the September 3 grievance meeting that he had exhibited behaviors warranting

medical examination. Although certain of these behaviors were exhibited during the processing of Degall's grievance, the ALJ held that the State could properly use those to buttress its request to the Employee Health Service (EHS) to have Degall referred for psychiatric examination.

In his exceptions, Degall argues that it was a September 9 letter from the State, after his participation in the grievance meeting, which caused EHS to schedule him for a psychiatric examination. That letter refers to Degall's behavior at the grievance meeting and he argues that the State may not rely in any way upon any behavior exhibited in conjunction with the prosecution of a grievance. Degall otherwise argues that the State's claimed reasons for requesting a psychiatric evaluation were pretextual.

The State in its response argues that the ALJ's findings of fact and conclusions of law are correct in all material respects and that his decision should be affirmed.

Having reviewed the record and considered the parties' arguments, we affirm the ALJ's decision.

It is clear from our review of the record that the State had legitimate reasons to question Degall's mental and physical health from behaviors he exhibited both within and without the grievance context. The State properly relied upon all manifestations of questionable behavior regardless of the context in which those behaviors arose. An employee's conduct during engagement in protected activities certainly can be considered by

an employer if it has a bearing on the employee's continuing ability to perform his or her job.[1/]

Even were we to disregard Degall's behavior during the grievance meeting, we find, in agreement with the ALJ, that his earlier behaviors had convinced the State of the need to have Degall examined. There is nothing in the record which persuades us that the State's asserted reasons for examining Degall were in any way pretextual.

For the reasons set forth above, the ALJ's decision is affirmed and the exceptions are denied.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

1/ See, e.g., State of New York (OMRDD), 24 PERB ¶3036 (1991).

2D- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

FRANKFORT-SCHUYLER TEACHERS ASSOCIATION,

Charging Party,

-and- **CASE NO. U-14116**

FRANKFORT-SCHUYLER CENTRAL SCHOOL DISTRICT,

Respondent.

JOSEPH M. POWER, for Charging Party

HARTER, SECREST & EMERY (JAMES P. BURNS III of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Frankfort-Schuyler Central School District (District) to a decision by the Assistant Director of Public Employment Practices and Representation (Assistant Director) sustaining a charge filed by the Frankfort-Schuyler Teachers Association (Association) that the District had violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) by unilaterally assigning student supervisory duties to teachers represented by the Association during what had previously been duty-free time.[1/]

1/ The Association also alleged that the District had violated the Act by unilaterally imposing a record-keeping requirement on unit employees. The Assistant Director found that the District's action violated §209-a.1(d) of the Act and ordered the District's imposition of the requirement be rescinded. No exceptions have been taken to this aspect of his decision.

The matter was decided on a stipulated record and neither party filed a memorandum of law. The Administrative Law Judge (ALJ) who conducted the conference confirmed the parties' stipulation of fact in a post-conference letter. That letter notes that the matter was being processed "for decision on the pleadings and the following facts stipulated to by the parties at the conference." The charge deals with a memorandum issued by the District's Superintendent of Schools, Frank A. Saraceno, on August 31, 1992, stating: "Teachers at the elementary schools are expected to be at their duty stations at 8:00 AM, as students will be dismissed from the cafeteria at 8:00 AM to go to the classrooms. Instruction starts at 8:15 AM at West Frankfort [Elementary School] and 8:25 AM at Reese Road [Elementary School]." The charge alleges that "[e]lementary teachers at Reese Road Elementary School have heretofore been free of any duty station responsibilities from 8:00 a.m. to 8:10 a.m." (emphasis in the original). The District's answer admitted the truth of that allegation "until September of 1992, after which date the practice at West Frankfort Elementary School, that all teachers report to their classrooms at 8:00 a.m. to supervise students, was extended to the Reese Road Elementary School." The stipulation drafted by the ALJ stated, in relevant part, that:

> 2. the at-issue employees at Reese Road Elementary School had, prior to the change reflected in paragraph 3 of the at-issue memo, ten minutes of free time from 8:00 a.m. to 8:10 a.m. each work day;

> 3. pursuant to the at-issue change reflected in paragraph 3 of the at-issue memo, the District has replaced that free time with supervisory duties;

The parties further agreed that neither would file a brief. Thereafter, the Assistant Director issued his decision finding that the reduction of employees' duty-free time must be negotiated prior to implementation and, because the District had acted unilaterally to eliminate what it had conceded was duty-free time, it had violated the Act. He ordered that the practice of allowing teachers at Reese Road free time from 8:00 a.m. to 8:10 a.m. be restored and that those teachers at Reese Road who had to forego such free time be paid at their contractual rate of pay for each day they did so, with interest at the maximum legal rate.

In its exceptions, the District argues that there was an ambiguity in the ALJ's reference to "free" time in the stipulation and that what the District meant was time free from supervisory duties, although still work time, about which it had no duty to bargain when it imposed the supervisory requirement. The District's counsel, who did not represent the District at the conference, submitted an affidavit with the District's exceptions from the principal of Reese Road Elementary School setting forth his understanding of the teachers' responsibilities from 8:00 a.m. to 8:10 a.m. prior to the issuance of the Superintendent's memorandum. The District further excepts to the Assistant Director's remedy, arguing first, that the teachers lost no wages because they were already paid for the time at

school from 8:00 a.m. to 8:10 a.m. and second, that maximum legal interest is 25% as set forth in Penal Law §190.40 and that, therfore, the order is in the nature of exemplary, or punitive, damages which PERB has no authority to order.

For the reasons below, we affirm the Assistant Director's decision.

It is clear from the stipulation that the facts upon which the decision below was based were adduced from the parties' pleadings and from their agreements at the pre-hearing conference. That stipulation was distributed to the parties prior to the reassignment of the case to the Assistant Director. The District had ample opportunity to clarify its interpretation of "free" time prior to the issuance of the Assistant Director's decision. Additionally, the District admitted in its answer that the period of time from 8:00 a.m. to 8:10 a.m. had been "free from any duty responsibilities".[2/] The District cannot now, after the substitution of a different representative, argue persuasively that the characterization by the Assistant Director

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2/ The District also excepts to the decision on the basis that it is inconsistent with an ALJ decision in Watertown City Sch. Dist., 25 PERB ¶4689 (1992). That decision dealt with an allegation that duty-free time had been unilaterally reduced by the assignment of student supervision duties. The ALJ, finding that the charging party there had failed to establish that the time in question was duty-free time, dismissed the charge. Here, the District has admitted that the time from 8:00 a.m. to 8:10 a.m. had been free from any scheduled duties. The cases being dissimilar, the holding in Watertown is not applicable. Further, even if the cases were identical, the Board, while it might take note of, and adopt, the rationale in an ALJ decision, is not bound to do so.

of "free" time as "duty-free" time was in error, when that determination was based upon its own pleadings accepted as part of the record in this proceeding.[3/]

The District further argues that the award of payment for the loss of "duty-free" time is inappropriate because the teachers were already scheduled to be at work during the time in question and were paid for each of those days. This argument misapprehends the nature of the violation found by the Assistant Director. The assignment of supervisory responsibilities from 8:00 a.m. to 8:10 a.m. resulted in an increase in the teachers' assigned working time, for which they are entitled to be compensated.[4/]

The District's exception to the Assistant Director's award of interest at the maximum legal rate is likewise rejected. We have adopted as our interest rate the interest rates set forth in CPLR 5004,[5/] and General Municipal Law §3-a, which are currently fixed at 9% per annum, not 25% as asserted by the District. There are no punitive damages in an award of interest at the rates prevailing in civil matters which evidence a legislative policy in an area similar to our decisions and orders. However,

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3/ See United Fed'n. of Teachers and Bd. of Educ. of the City Sch. Dist. of the City of New York, 23 PERB ¶3042 (1990). The affidavit submitted by the District in support of its exceptions is not part of the record on which the decision was based and it is not properly considered by us for the first time on appeal.

4/ County of Nassau, 24 PERB ¶3029 (1991); Addison Cent. Sch. Dist., 16 PERB ¶3099 (1983).

5/ Westbury Teachers Ass'n, 14 PERB ¶3063 (1981).

to the extent that the District seeks clarification of the order of remedial relief, we will specify the amount of interest to be paid in accordance with the ALJ's order.

Accordingly, the District is hereby ordered to:

1. Restore the practice of allowing teachers at Reese Road Elementary School free time from 8:00 a.m. to 8:10 a.m.

2. Pay teachers at the Reese Road Elementary School who have had to forego such free time at their contractual rate of pay for each day that they have done so, plus interest at the rate of 9% per annum.

3. Sign and post the attached notice at all locations normally used to post communications to employees represented by the Association.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify employees of the Frankfort-Schuyler Central School District represented by the Frankfort-Schuyler Teachers Association that the District will:

1. **Restore the practice of allowing teachers at Reese Road Elementary School free time from 8:00 a.m. to 8:10 a.m.**

2. **Pay teachers at the Reese Road Elementary School who have had to forego such free time at their contractual rate of pay for each day that they have done so, plus interest at 9% per annum.**

Dated . . . . . **By** . . . . . .
(Representative) (Title)

FRANKFORT-SCHUYLER CENTRAL SCHOOL DISTRICT

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

2E- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, CAYUGA CORRECTIONAL FACILITY, LOCAL 191,

Charging Party,

-and-

CASE NO. U-13270

STATE OF NEW YORK (DEPARTMENT OF CORRECTIONAL SERVICES),

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (PAMELA BRUCE of counsel), for Charging Party

WALTER J. PELLEGRINI, GENERAL COUNSEL (JULIE SANTIAGO of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Cayuga Correctional Facility, Local 191 (CSEA) to a decision by an Administrative Law Judge (ALJ). In relevant part, the ALJ, after a hearing, dismissed CSEA's charge against the State of New York (Department of Correctional Services) (State), which alleges that the State violated §209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act).[1/]

[1/]The ALJ dismissed alleged violations of §209-a.1(d) and (e) of the Act, but no exceptions have been taken to the ALJ's decision in those respects.

The charge stems from two unrelated, out-of-title grievances filed by unit employees.

CSEA first alleges that Paul Hannigan, the Plant Superintendent at the Cayuga Correctional Facility (Facility), threatened an assembled group of maintenance employees, on October 31, 1991, with lowered performance evaluations because the unit president, Richard Franzcek, had filed a grievance. The grievance, filed on August 1, 1991, protested the assignment of allegedly supervisory duties to him and another unit employee. CSEA alleges that after he had referenced Franzcek's grievance, he stated that "future evaluations would reflect [the employees'] lack of cooperation." Hannigan testified that he spoke directly from a prepared text which states that some employees were continuing to "refuse to comply" with "facility policy regarding work hours and hanging out" and that he was no longer going to talk to them about it and instead he was "going to rate you appropriately in your evaluations." The ALJ did not decide what Hannigan said at the October 31 meeting. Instead, the ALJ dismissed this allegation on a finding that any statements Hannigan may have made to the employees were a response to long-standing time abuses by employees, not Franzcek's grievance.

CSEA's second allegation centers on statements allegedly made by Hannigan to Franzcek and unit employees William S. Kemp and Bruce A. Rawleigh, informing Kemp, Rawleigh and another unit employee, Allen Avery, that they were no longer eligible for hazardous duty pay. According to Kemp and Rawleigh, Hannigan

told them that they could "thank Al Avery for losing this compensation because he had filed a grievance and his action would not have come about if Al hadn't done so." According to Hannigan, he told Kemp and Rawleigh, on behalf of Gary Anthony, Deputy Superintendent for Administration at the Facility, that "as a result of an investigation into a grievance . . . it was determined that you [the employees] were not eligible for hazardous duty pay." Franzcek's testimony regarding his conversation with Hannigan was to the same effect as Kemp's and Rawleigh's. In Hannigan's rebuttal to Franzcek's testimony, he reiterated that he only told Franzcek that the three employees were determined after Anthony's investigation to be ineligible for hazardous duty pay, an investigation which was probably prompted by Avery's grievance. Again, without deciding precisely what Hannigan had said, the ALJ dismissed this allegation apparently on the ground that Hannigan's statements were ambiguous and read most reasonably to convey only that the hazardous duty pay was eliminated because the employees were discovered to be ineligible, not because the grievance was filed.

CSEA's third allegation is that Kemp, Rawleigh and Avery were removed from the list of persons eligible for hazardous duty pay because Avery had grieved Hannigan's assignment to him of allegedly out-of-title work. The ALJ dismissed this allegation on a finding that Anthony, not Hannigan, determined after an investigation that the employees were ineligible for hazardous duty pay, a conclusion endorsed on review by both Frederick

Richardson, Superintendent of the Facility, and the Budget and Finance Office of the State Department of Correctional Services (DOCS). Anthony received the grievance in due course of the parties' grievance procedure and one of its allegations regarding inmate supervision caused him to question whether the established hazardous duty policy was being applied correctly. After his investigation, Anthony concluded that the duties of a motor vehicle operator and a motor vehicle mechanic were not performed a minimum of fifty percent of the time within the confines of a secure facility in the presence of inmates who did not have security clearances. The three incumbents of those positions were then rendered ineligible for hazardous duty pay.

CSEA alleges in its exceptions that the record as a whole, including parts allegedly misconstrued or ignored by the ALJ, establishes that Hannigan twice improperly threatened employees and caused the three employees to lose their premium pay eligibility because grievances had been filed.

The State in its response argues that the ALJ's decision should be affirmed.

For the reasons set forth below, we reverse the ALJ's decision in part and remand it to the ALJ for subsequent decision.

The ALJ dismissed the first allegation because CSEA had failed to establish that Hannigan's statements to the assembled employees on October 31 were caused by Franzcek's grievance. This disposition, however, does not treat with the nature of

CSEA's first allegation. CSEA's first allegation rests upon a claimed threat to the exercise of protected rights. The question under that first allegation is not what caused Hannigan to speak, but whether his statements, as made and objectively considered, constituted an improper threat. The ALJ did not resolve what he characterized as "contradictory" testimony regarding statements made at the October 31, 1991 meeting. Therefore, the ALJ's dismissal of the first allegation must be reversed.

Similar reasoning necessitates our reversal of the ALJ's disposition of CSEA's second allegation. The ALJ again did not decide what Hannigan said to the employees, noting that "what was actually said is in serious dispute."

Resolution of these fact questions is necessary to the disposition of these allegations because Hannigan's remarks are improperly threatening if they are as characterized by the employees. An employee's right to file and pursue a contract grievance is fundamental. As such, any statements by an employer to employees linking grievance activity to their employment relationship must be framed in terms which clearly convey to the employees that any job consequences caused by or taken in response to a grievance are not in retaliation for the grievance having been filed or prosecuted. Hannigan's statements, if as alleged by CSEA, left the employees with the impression that they would be disadvantaged financially and otherwise if they were to file a grievance. Whether Hannigan intended to convey that message is immaterial because the employees could not know his

state of mind. The violation rests upon the words as spoken, as objectively viewed in the totality of the circumstances.

Alternatively, there is no violation if Hannigan's testimony were to be credited because, on his version of the events, there were no impermissible threats. It is, therefore, necessary to remand these two aspects of the charge to the ALJ for a determination as to what Hannigan actually said and whether, in light of our decision herein, those statements improperly threatened employees.

We affirm, however, the ALJ's decision dismissing CSEA's allegation that the hazardous duty pay was eliminated because of the second out-of-title work grievance. As the State notes in its response, the ALJ's dismissal of this allegation rests substantially upon a credibility assessment of Anthony's testimony which is entitled to considerable deference and weight. There is no evidence that Anthony was improperly motivated in conducting his investigation or in reaching the conclusions that he did. There is, for example, no evidence that the established hazardous duty pay criteria were knowingly misapplied which would have arguably evidenced an improper motive. Indeed, CSEA's own recognition that Anthony did not know that Kemp and Rawleigh assisted in the preparation of Avery's grievance is persuasive that he did not remove the three employees from premium pay eligibility because of Avery's grievance, but simply because they were ineligible for the benefit. Although the information about the misapplication of the hazardous duty pay policy was first brought to Anthony's attention by Avery's grievance, he was

entitled to pursue that information and to act based upon the results of his investigation.[2/] The entirety of the remaining evidence which CSEA argues establishes that Hannigan was actually responsible for removing the employees from hazardous duty pay eligibility is speculative and insufficient to set aside the ALJ's credibility determination. Having found that CSEA failed to establish that the employees were removed from premium pay eligibility because of and in retaliation for Avery's grievance, the ALJ correctly dismissed this allegation.

For the reasons and to the extent set forth above, the ALJ's decision regarding the first and second identified allegations is reversed and the case is remanded to the ALJ for decision on those allegations consistent with our decision herein. The charge is otherwise dismissed. SO ORDERED.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

[2/] Brunswick Cent. Sch. Dist., 19 PERB ¶3063 (1986) (endorsing ALJ's decision in State of New York, 17 PERB ¶4576 (1984)).

2F- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WILLIAM T. BRUNS,

Charging Party,

-and-

CASE NO. U-14203

STATE OF NEW YORK (GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS) and COUNCIL 82, AFSCME, AFL-CIO,

Respondents.

KATHLEEN C. BRUNS, for Charging Party

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by William T. Bruns to a decision issued by the Director of Public Employment Practices and Representation (Director) dismissing Bruns' charge against the State of New York (Governor's Office of Employee Relations) (State) and Council 82, AFSCME, AFL-CIO (Council 82) as deficient. Bruns alleges that the State violated §209-a.1 (a) and (c) of the Public Employees' Fair Employment Act (Act) by violating several provisions of the collective bargaining agreement between the State and Council 82 dealing with out-of-title work assignments, subcontracting and lodging reimbursement. Bruns also alleges that Council 82 violated §209-a.2(c) of the Act when it failed to pursue several grievances he had filed.

On behalf of the Director, Bruns was advised by the Assistant Director of Public Employment Practices and

Representation (Assistant Director) that the charge was deficient in that it alleged violations which occurred more than four months prior to the filing of the charge,[1/] it raised issues already raised in earlier and still pending charges,[2/] and it failed to plead specific facts in support of its conclusory allegations.[3/]

Bruns filed an amendment on February 8, 1993, in which he acknowledged that several of the allegations in this charge are "similar" to allegations set forth in his earlier charges (Case Nos. U-12252 and U-13349), but he asserted that the violations are continuing. The remainder of the amendment refers to Council 82's September, October and December 1992 refusals to process certain of Bruns' grievances to arbitration and reiterates, without additional supporting facts, allegations of wrongdoing by Council 82 and the State.

The Director dismissed Bruns' charge on three grounds. The charge was dismissed as untimely as to the events which occurred more than four months prior to the filing of the charge. As to those allegations which were either the same or similar to allegations raised in previous charges, and which Bruns asserted

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1/ Rules of Procedure (Rules), §204.1(a)(1).

2/ Case No. U-12252 has been heard and is in the process of being decided by the assigned Administrative Law Judge and Case No. U-13349 is awaiting scheduling for hearing.

3/ Rules, §204.1(b)(3).

were "continuing violations", the charge was dismissed as not setting forth a separate violation of the Act. As to the remaining, timely allegations, all of which had to do with Council 82's refusal to process several of Bruns' grievances to arbitration, the charge was dismissed for failure to plead specific facts which would evidence that Council 82's decisions were arbitrary, discriminatory or made in bad faith.

Bruns argues in his exceptions that the Director's decision should be reversed as his charge is not deficient. Having reviewed Bruns' exceptions, we affirm the Director's dismissal of the charge.

The allegations against the State all assert violations of the contract between Council 82 and the State and all relate to actions of the State taking place in August 1990.[4/] PERB has no jurisdiction to entertain alleged contract violations which do not also constitute improper practices or to enforce contract provisions.[5/] Further, the allegations are all untimely, occurring more than four months prior to the filing of the charge and are, therefore, dismissed.

As to the allegations against Council 82, several are admitted by Bruns as being "similar" to allegations raised in

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4/ These include Bruns' allegations against the State regarding out-of-title work, use of nonunit personnel to perform unit work, loss of overtime and failure to reimburse for travel expenses at the contractual rate.

5/ Act, §205.5(d).

Case No. U-12252.[6] Other allegations relating to the handling of his Fair Labor Standards Act (FLSA) overtime claim by Council 82's retained counsel are the basis of his charge in Case No. U-13349. As these claims are the basis of improper practice charges already before PERB, they too must be dismissed.[7] The propriety of Council 82's actions in these respects will be adjudicated in the context of the already pending charges. A second charge premised on the same grounds is unnecessary and inappropriate.

The remaining allegations against Council 82 relate to its refusal to process to arbitration certain grievances brought by Bruns. The amendment filed by Bruns contains letters from Council 82 to Bruns explaining its rationale for denying his request that these grievances be arbitrated. Each details the reasons for Council 82's decision[8] and no other facts are alleged which would support a finding that Council 82 has breached its duty of fair representation to Bruns. Inasmuch as Bruns has failed to set forth facts which would establish that

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[6] All deal with Council 82's failure to properly grieve alleged contractual violations.

[7] Although Bruns asserts that these are "continuing violations", they are actually reassertions of the same allegations contained in his earlier charges. That he may continue to be affected by the earlier complained of actions does not constitute a separate violation of the Act. Such an effect would, likewise, not constitute a "continuing violation". City of Yonkers, 7 PERB ¶3007 (1974).

[8] Nassau Educ. Chapter of the Syosset Cent. Sch. Dist. Unit, CSEA, Inc., 11 PERB ¶3010 (1978).

Council 82 acted in an arbitrary, discriminatory or improperly motivated manner[9/] in reaching its decisions regarding his grievances, those allegations must also be dismissed.

For the reasons set forth above, the Director's decision is affirmed and the exceptions are denied.

IT IS, THEREFORE, ORDERED that the charge be, and it hereby is, dismissed.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

9/ Professional Staff Congress, 23 PERB ¶3030 (1990); State of New York and New York State Public Employees Fed'n, 22 PERB ¶3049 (1989).

2G- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, DUTCHESS COUNTY EDUCATION LOCAL #867, ARLINGTON SCHOOL DISTRICT UNIT,

Charging Party,

-and-

CASE NO. U-11278

ARLINGTON CENTRAL SCHOOL DISTRICT,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (PAUL S. BAMBERGER of counsel), for Charging Party

RAYMOND G. KUNTZ, ESQ., for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Dutchess County Education Local #867, Arlington School District Unit (CSEA) to a decision by an Administrative Law Judge (ALJ). After a hearing, the ALJ dismissed CSEA's charge against the Arlington Central School District (District) which alleges that the District violated §209-a.1(a) and (d) of the Public Employees' Fair Employment Act (Act) by ordering Theresa Davies, a part-time bus driver for the District, to submit to a drug test, a right afforded the District by an arbitration award rendered on a disciplinary grievance filed by CSEA on Davies' behalf.

A brief background is necessary to place this charge in its proper context. The District first ordered Davies to submit to a urinalysis drug test in September 1988 after receiving a deposition from an acquaintance of Davies that Davies had used cocaine on two occasions several months earlier in 1988. She tested positive for cannabinoids. Later in September 1988, the District issued Davies a notice of discipline which included allegations of drug use, excessive absenteeism, chargeable accidents and bringing an unloaded firearm onto District property. After a "name-clearing" hearing, the District terminated her. CSEA grieved Davies' termination pursuant to its contractual grievance procedure which ends in binding arbitration. It also filed an improper practice charge alleging that the District violated §209-a.1(d) of the Act when it unilaterally subjected Davies to a compulsory drug test. After a hearing, the arbitrator issued his decision in September 1989. The arbitrator ordered Davies reinstated without back pay effective September 18, 1989. The reinstatement, however, was conditioned upon the right granted the District to "randomly test Davies for drug use throughout the school year 1989-90 and to discharge her if she is found to be a substance abuser." Upon her return to work in September 1989, Davies was ordered to submit to a drug test. She refused and resigned her employment the next day.

This charge was filed in November 1989, but it was held in abeyance pending our determination on the first improper practice

charge. On January 31, 1992, we issued our decision on that first charge.[1/] On a fact-specific analysis, we held the first drug test to be mandatorily negotiable because it was neither random nor grounded upon a reasonable suspicion of impairment. In shaping a remedy in that case, we took notice of the arbitrator's earlier award and did not order Davies reinstated with back pay in recognition of the arbitrator's findings and remedy.

The ALJ dismissed this charge following our decision on the first charge. In dismissing the §209-a.1(d) allegation, the ALJ held that the District's order to Davies, issued pursuant to specific rights granted it by the arbitrator, was not unilateral in nature because the arbitration award represented the culmination of the parties' negotiated grievance procedure. In effect, the ALJ held that both parties were bound by the terms of the unappealed arbitration award because they agreed to that grievance procedure and CSEA invoked it on Davies' behalf. Finding no improper motivation in the District's implementation of the award, and no basis for any per se violation, the ALJ dismissed the §209-a.1(a) violation.

In its exceptions and response to the cross-exceptions filed by the District, CSEA argues that the ALJ should have disregarded the arbitrator's award because it is repugnant to the Act and that its simple agreement to and use of a contractual grievance

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[1/]Arlington Cent. Sch. Dist., 25 PERB ¶3001 (1992).

procedure does not evidence the necessary plain and clear waiver of bargaining rights.

In cross-exceptions, the District argues that the ALJ erred in failing to recognize the District's asserted right to order Davies to submit to a drug test apart from the rights granted it by the arbitration award and by refusing to permit the District to question Davies regarding the motivation for her resignation. It otherwise argues that the ALJ's dismissal of the charge is correct.

For the reasons set forth below, we affirm the ALJ's decision.

CSEA argues that this case is indistinguishable from the first if the arbitration award is treated as a nullity. In that respect, CSEA argues that we should apply our standards for deferral to an arbitration award which include, in relevant part, a repugnancy criterion.[2/] The arbitrator's award in this case is asserted to be repugnant to the policies of the Act. CSEA argues that the arbitrator could not give the District the unrestricted right to test Davies because we held subsequently that a targeted drug test, not grounded upon a reasonable suspicion of impairment, was mandatorily negotiable.

Just as in its first charge, CSEA's refusal to bargain charge here rests upon a unilateral change theory. There can be no cause of action on that theory if the District is entitled to

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[2/]New York City Transit Auth. (Bordansky), 4 PERB ¶3031 (1971).

rely upon the arbitrator's award. As the ALJ held, actions taken pursuant to the express terms of an arbitration award represent the culmination of a bilateral agreement establishing a complete system for the adjudication of disciplinary charges, the antithesis of unilateral action. As CSEA itself recognizes, a reversal of the ALJ's decision necessitates that we treat the arbitration award as a nullity. CSEA and the District, however, bestowed upon the arbitrator broad power to fashion the appropriate penalty in disciplinary cases in which just cause for discipline was found to exist. Review of that award is available under Civil Practice Law and Rules (CPLR) Article 75. To avoid our becoming a substitute for or an alternative to the statutory review procedures, a CPLR proceeding should be the preferred mechanism for the review, modification or vacatur of disciplinary arbitration awards, absent extraordinary circumstances. CSEA argues that a circumstance sufficient to warrant our review is presented in this case because the award is repugnant to the Act. We find, however, no repugnancy in the arbitrator's award.

The alleged repugnancy of the arbitration award lies in the arbitrator's reliance, in part, upon the results of the September 1988 drug test. The test, it is argued, had to be bargained and it was not. Therefore, we should disregard the award entirely because it is based in part upon the improperly obtained results of that test. The arbitrator's award, however, was also based on incidents unrelated to the drug test, including Davies' admitted use of marijuana on at least one earlier occasion, her admission

that she had at least once permitted cocaine in her home, evidence that she had been present when cocaine was used by others, and her bringing of an unloaded handgun onto school property. We have no way of knowing the extent to which these factors may have influenced the arbitrator's decision to condition Davies' reinstatement on the District's right to test her for drug use. We do know that it was not solely the drug test which shaped the arbitrator's award and we cannot, on that basis, find any necessary repugnancy in the award.

We must also recognize the differences between our statutory proceedings and disciplinary arbitrations. The issues in the improper practice proceeding and in the grievance were simply not the same. The issue before us was essentially a scope of negotiations question. The issue before the arbitrator was whether there was just cause for Davies' discipline and, if so, what the appropriate penalty should be. In our first decision in this case, we held only that the targeted drug test had to be bargained because it was not grounded upon a reasonable suspicion of impairment. We did not hold that the result of the test could not be properly considered by an arbitrator in the context of a disciplinary arbitration which had been completed before our decision issued. Indeed, we suggested the contrary in our first decision when we modified our typical remedial order so as not to

"alter the rights and duties which the parties acquired and assumed under their contract."[3/]

Public policy considerations also warrant denial of the request to nullify the arbitration award in this case. If we were to deny the District the right to test Davies for drug use pursuant to the arbitrator's award, we would undermine all of the policies which favor the negotiation and utilization of contractual grievance procedures. We would also disturb the finality of the process the parties negotiated for their mutual benefit.

There may be some few number of arbitration awards so plainly and clearly inconsistent with the Act that these would not warrant our deferral to any extent or for any purpose.[4/] This, however, is not such a case.

The dismissal of the §209-a.1(a) allegation is affirmed for the reasons stated by the ALJ.

For the reasons set forth above, the ALJ's decision is affirmed and CSEA's exceptions are denied. Our affirmance of the ALJ's decision makes it unnecessary to consider the District's cross-exceptions.

[3/]25 PERB ¶3001, at 3006.

[4/]See, e.g., Metropolitan Suburban Bus Auth., 20 PERB ¶3066 (1987); Barton Brands, 135 LRRM 1022 (1990) (employee's reinstatement conditioned upon his not serving as a union official for three years).

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

2H- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, ERIE COUNTY LOCAL 815, ERIE COUNTY WHITE COLLAR EMPLOYEES UNIT,

Charging Party,

-and-

CASE NO. U-12756

COUNTY OF ERIE,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (MIGUEL ORTIZ of counsel), for Charging Party

MICHAEL A. CONNORS, ESQ., for Respondent

BOARD DECISION AND ORDER

Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Erie County Local 815, Erie County White Collar Employees Unit (CSEA) appeals from an Administrative Law Judge's (ALJ) decision dismissing, for lack of jurisdiction, CSEA's charge against the County of Erie (County). CSEA alleges in its charge that the County violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it refused to pay a unit employee for time spent in traveling to a meeting related to his job after the employee's workday had ended. The ALJ had earlier deferred, pursuant to our decision in Herkimer County

BOCES,[1] consideration of the jurisdictional question[2] pending the arbitration of a grievance which CSEA had filed. By award dated June 10, 1992, the arbitrator dismissed the grievance, finding that the County had not violated the contract. The arbitrator found that the County had an established practice of paying employees portal-to-portal travel pay. He concluded, however, that under §38.3 of the parties' contract, the County had the unrestricted right to change its travel policy from time to time and that the County had, in April 1991, changed its policy to deny employees travel pay in the relevant circumstances.

Section 38.3 of the parties' contract, entitled "Travel Policies", provides as follows:

> The policies and procedures covering expense for employees conducting official County business are reflected in the Rules and Regulations issued by and on file in the Budget Office of the County of Erie as amended by the Budget Office from time to time.

After receipt of the arbitrator's award, CSEA moved to reopen the charge which had been conditionally dismissed by the ALJ. In the decision now on appeal, the ALJ accorded "substantial weight" to the arbitrator's decision and dismissed the charge for lack of jurisdiction. CSEA argues that the award

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[1]20 PERB ¶3050 (1987).

[2]Section 205.5(d) of the Act denies PERB jurisdiction over alleged violations of an agreement or the enforcement thereof.

is repugnant to the Act and it should not be, therefore, the basis for a jurisdictional dismissal. The alleged repugnancy is found in the arbitrator's implicit conclusion that CSEA effectively waived by agreement to §38.3 any right to further bargaining regarding such changes in the travel policy as the County may make from time to time. The County has not filed a response to CSEA's exceptions.

For the reasons set forth below, we reverse the ALJ's decision dismissing the charge for lack of jurisdiction, but we nonetheless decline to reopen the charge.

The initial question before us at this time is whether we have jurisdiction over CSEA's charge. We have consistently interpreted the jurisdictional limitation in §205.5(d) of the Act to be applicable only if the contract is a reasonably arguable source of right to the charging party with respect to the subject matter of its charge.[3/] Until Herkimer County BOCES, charges were often unconditionally dismissed for lack of jurisdiction any time the charging party had filed a grievance related to its improper practice charge because we considered the filing of the grievance to represent an implicit admission by the charging party that the contract afforded it rights with respect to the issues in dispute under the improper practice charge. In Herkimer County BOCES, we simply exercised our discretion to defer consideration of the jurisdictional issue to arbitration in

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[3/]County of Nassau, 24 PERB ¶3029 (1991).

much the same way as we defer consideration of the merits of a charge within our jurisdiction. Our deferral, however, does not alter the nature of the jurisdictional question and, as we are without power to consider charges outside the scope of our jurisdictional grant, we, not an arbitrator, are responsible for making the jurisdictional determination. Under Herkimer County BOCES, therefore, an arbitration award is merely an aid to our determination of that jurisdictional question.

Bearing in mind the nature of the jurisdictional inquiry, the first issue to be decided is: What is the arbitrator's interpretation of the contract. If the contract provisions are not a grant of right to CSEA in relevant respect, the charge is within our jurisdiction.

The arbitrator held that §38.3 of the contract afforded the County the unrestricted right to fix its travel compensation policy and practice at any time. The circumstances here are essentially the same as those in State of New York-Unified Court System (hereafter UCS).[4/] There, as here, the contract clause vested the employer with total discretion regarding the subject of the improper practice charge. As such, CSEA does not have in this case, any more so than in UCS, any basis to claim that its contract has been violated. Therefore, the ALJ's dismissal for lack of jurisdiction must be reversed.

[4/]25 PERB ¶3035 (1992). See also Cairo-Durham Cent. Sch. Dist., 25 PERB ¶3059 (1992).

The arbitrator's interpretation of §38.3 of the parties' contract is also relevant to our declination to reopen the charge. In that respect, repugnancy arguments are clearly relevant under our deferral policy, first articulated in New York City Transit Authority.[5/] There is no claim that the issues were not fully litigated before the arbitrator or that the proceedings were in any way unfair or irregular. As requested by CSEA, the arbitrator construed the language of §38.3 in light of the other subsections of §38 of the parties' contract. He concluded from that review that §38.3 of the contract clearly and unambiguously gave the County the right to amend its travel policy in relevant respect. In considering whether this award is repugnant to the Act, our decision in UCS[6/] is again dispositive, as it was on the jurisdictional question. In that case, we concluded that the contract, which gave the employer unrestricted discretion regarding the grant of paid leave for a certain purpose, effectively waived CSEA's rights to further bargaining and deprived it of any unilateral change cause of action. As already noted, the circumstances here are indistinguishable. Having ourselves found a waiver in similar circumstances, the arbitrator's conclusion here cannot be said to be repugnant to the Act.

[5/] 4 PERB ¶3031 (1971).

[6/] Supra note 4.

For the reasons set forth above, we reverse the ALJ's jurisdictional dismissal, grant CSEA's exceptions in that respect, but deny its motion to reopen the charge. SO ORDERED.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

21- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JOSEPH DENNIS,

Charging Party,

-and-

CASE NOS. U-14300 & U-14377

CIVIL SERVICE EMPLOYEES ASSOCIATION,

Respondent.

JOSEPH DENNIS, pro se

NANCY E. HOFFMAN, GENERAL COUNSEL (WILLIAM A. HERBERT of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Joseph Dennis to a decision by the Director of Public Employment Practices and Representation (Director). Dennis' first charge (U-14300), filed on February 11, 1993, alleges that the Civil Service Employees Association (CSEA) violated §209-a.2(a) and (b) of the Public Employees' Fair Employment Act (Act). The charge refers to actions by CSEA at different dates in 1992, the gravamen of which is an alleged breach by CSEA of its duty of fair representation. On behalf of the Director, the Assistant Director of Public Employment Practices and Representation (Assistant Director) informed Dennis that he had no standing to allege a violation of §209-a.2(b) of the Act pertaining to a union's duty to bargain in

good faith with an employer. Although the duty of fair representation allegations are cognizable under §209-a.2(a) of the Act, Dennis was informed that those allegations were untimely to the extent they concerned actions before October 11, 1992, and were otherwise not supported by allegations of fact.

Dennis then filed a second charge, apparently intending to amend and correct the first charge. Dennis was informed, however, that the first charge was still deficient, as was the second. When Dennis declined to withdraw the charges, the Director dismissed them.

Dennis excepts to the Director's decision finding him without standing to allege a violation of §209-a.2(b), finding his charge untimely as to events occurring more than four months before his charges were filed and finding that his charges lack the factual specificity required by our Rules of Procedure (Rules).

CSEA in its response argues that the Director's decision is correct and should be affirmed.

Having reviewed the record and considered the parties' arguments on appeal, we affirm the Director's decision in part and reverse and remand in part.

We affirm the Director's decision regarding standing and timeliness for the reasons set forth in his decision. We also affirm his dismissal of certain of Dennis' allegations as factually deficient. Many of Dennis' general allegations of coercion, interference, racism and discrimination are wholly

conclusory. Section 204.1(b)(3) of our Rules requires a clear and concise statement of the facts constituting the alleged improper practice including names, dates and places of each particular act pleaded as a violation. Dennis' conclusory allegations do not satisfy this requirement of the Rules. However, not all of his allegations are deficient on this basis. Having reviewed the charge as filed and as amended, we find the following allegations to have been pleaded with sufficient specificity to meet the requirements of §204.1(b)(3) of our Rules: an allegation that on or about November 30, 1992, CSEA agents in its regional office had no contact with Dennis despite his telephone calls; an allegation that in November 1992, Linda Williams, another CSEA representative, was unprepared to represent him on a grievance; an allegation that on November 23, 1992, CSEA incorrectly handled a grievance by referring to a different grievance in its response; and an allegation that on December 9, 1992, a CSEA assistant contract administrator would not accept a valid grievance. These several allegations were sufficient to give CSEA fair notice of the actions intended to be proved as violations of its duty of fair representation by fixing, with reasonable specificity, names, dates and places. If CSEA is unable to reasonably frame an answer to these allegations on the basis of the information provided in the charge, it has recourse to a motion for particularization of the charge under §204.3(b) of the Rules. By reading a charging party's pleading requirement in §204.1(b)(3) of the Rules in conjunction with the

procedural rights afforded a respondent by our Rules, we believe we best protect the rights of a charging party to an opportunity to pursue a proper complaint while simultaneously ensuring that a respondent is not unreasonably burdened by allegations which are not susceptible to informed response.

For the reasons set forth above, the Director's decision is affirmed except as to the four allegations listed above, as to which his decision is reversed and the charge in those respects is remanded for further processing in accordance with this decision. In all other respects, IT IS ORDERED that the charge must be, and hereby is, dismissed.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

2J- 9/21/93

In the Matter of

OGDEN HOURLY EMPLOYEES,

Petitioner,

-and-

CASE NO. C-4099

TOWN OF OGDEN,

Employer,

-and-

LOCAL 1170, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Intervenor.

SHEILA M. SICHAK, for Petitioner

GAY H. LENHARD, for Employer

LINDA MCGRATH, for Intervenor

BOARD DECISION AND ORDER

On May 6, 1993, the Ogden Hourly Employees (petitioner) filed a timely petition for decertification of Local 1170, Communications Workers of America, AFL-CIO (intervenor), the current negotiating representative for employees in the following unit:

Included: Payroll Clerk, Clerk III w/typing-Police Dept., Nutrition Coordinator (part-time), Clerk-Typist-Town Clerk's Office (part-time), Clerk III w/typing-Town Clerk's Office, Court Clerk, Nutrition Site Aide (part-time), Dog Warden, Clerk III w/typing-Recreation, Assistant Assessor, Clerk-Typist-Police Dept., Assistant Building Inspector, Clerk-Typist-Building Office (part-time), Clerk III w/typing-Building Office, Maintenance Mechanic III, Clerk-Typist-Highway Dept. (part-time), Clerk III w/typing-Assessor Office.

Excluded: All other employees.

Upon consent of the parties, an on-site election was held on July 26, 1993. The results of this election show that the majority of eligible employees in the unit who cast valid ballots no longer desire to be represented for purposes of collective negotiations by the intervenor.[1/]

THEREFORE, IT IS ORDERED that the intervenor be, and it hereby is, decertified as the negotiating agent for the unit.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

1/ Of the 19 ballots cast, 6 were for representation and 13 against representation. There were no challenged ballots.

3A- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF CRAWFORD POLICE OFFICER'S BENEVOLENT ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4112

TOWN OF CRAWFORD,

Employer,

-and-

UNITED FEDERATION OF POLICE, INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Town of Crawford Police Officer's Benevolent Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of

collective negotiations and the settlement of grievances.

Unit: Included: All full-time and part-time police officers.

Excluded: Chief of Police, Sergeants and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Town of Crawford Police Officer's Benevolent Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

3B- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF WARWICK POLICE BENEVOLENT ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4117

TOWN OF WARWICK,

Employer,

-and-

UNITED FEDERATION OF POLICE, INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Town of Warwick Police Benevolent Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time and part-time police officers, detectives and sergeants.

Excluded: Chief of Police, dispatchers and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Town of Warwick Police Benevolent Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

3C- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

VILLAGE OF DELHI POLICE BENEVOLENT ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4123

VILLAGE OF DELHI,

Employer,

-and-

NEW YORK STATE FEDERATION OF POLICE, INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Village of Delhi Police Benevolent Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective

negotiations and the settlement of grievances.

Unit: Included: All full-time police officers.

Excluded: Chief of police and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Village of Delhi Police Benevolent Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

3D- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MONROE POLICE BENEVOLENT ASSOCIATION,

Petitioner,

-and- **CASE NO. C-4126**

VILLAGE OF MONROE,

Employer,

-and-

TRI-COUNTY FEDERATION OF POLICE, INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Monroe Police Benevolent Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time police officers, including detective/youth officer.

Excluded: Chief of Police, sergeants and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Monroe Police Benevolent Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

3E- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

Town of Blooming Grove Superior Officer's Council,

Petitioner,

-and-

CASE NO. C-4127

Town of Blooming Grove,

Employer,

-and-

United Federation of Police, Inc.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Town of Blooming Grove Superior Officer's Council has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective

negotiations and the settlement of grievances.

Unit:

Included: Sergeants

Excluded: Chief of Police and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Town of Blooming Grove Superior Officer's Council. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

3F- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF FISHKILL POLICE FRATERNITY, INC.,

Petitioner,

-and- **CASE NO. C-4128**

TOWN OF FISHKILL,

Employer,

-and-

NEW YORK STATE FEDERATION OF POLICE, INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Town of Fishkill Police Fraternity, Inc. has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All part-time police officers.

Excluded: Chief Executive Officer, Lieutenant and Commissioners of Police.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Town of Fishkill Police Fraternity, Inc. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

3G- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MONROE SUPERIOR OFFICER'S COUNCIL,

Petitioner,

-and- **CASE NO. C-4129**

VILLAGE OF MONROE,

Employer,

-and-

UNITED FEDERATION OF POLICE, INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Monroe Superior Officer's Council has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Sergeants

Excluded: Chief of Police, full-time and part-time police officers and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Monroe Superior Officer's Council. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

3H- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NEW PALTZ POLICE ASSOCIATION,

Petitioner,

-and- **CASE NO. C-4130**

TOWN OF NEW PALTZ,

Employer,

-and-

UNITED FEDERATION OF POLICE OFFICERS INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the New Paltz Police Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the

settlement of grievances.

Unit: Included: All full-time and part-time police officers, including sergeants.

Excluded: Chief of Police, commissioned officers and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the New Paltz Police Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

31- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF CORNWALL POLICEMEN'S BENEVOLENT ASSOCIATION INC.,

Petitioner,

-and-

CASE NO. C-4131

TOWN OF CORNWALL,

Employer,

-and-

UNITED FEDERATION OF POLICE, INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Town of Cornwall Policemen's Benevolent Association, Inc., has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective

negotiations and the settlement of grievances.

Unit: Included: All full-time police officers.

Excluded: Chief of Police and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Town of Cornwall Policemen's Benevolent Association, Inc. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

3J- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

Village of Saugerties Police Benevolent Association,

Petitioner,

-and-

CASE NO. C-4135

Village of Saugerties,

Employer,

-and-

United Federation of Police Officers, Inc.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Village of Saugerties Police Benevolent Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective

negotiations and the settlement of grievances.

Unit: Included: All uniformed members of the police department, including the rank of sergeant, all investigators and employees of the department.

Excluded: Chief of Police, school crossing guards and special patrolmen.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Village of Saugerties Police Benevolent Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

3K- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION LOCAL 424, A DIVISION OF UNITED INDUSTRY WORKERS, DISTRICT COUNCIL 424,

Petitioner,

-and-

CASE NO. C-4105

HEMPSTEAD UNION FREE SCHOOL DISTRICT,

Employer,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC. LOCAL 1000, AFSCME, AFL-CIO,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the United Public Service Employees Union, Local 424, A Division of United Industry Workers, District Council Local 424, has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described

below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: Groundskeepers, maintenance helpers, cleaners, maintainers, senior maintainers, messengers, bus drivers, all head custodians, supervising groundskeepers, maintenance supervisors, custodians.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Public Service Employees Union, Local 424, A Division of United Industry Workers, District Council Local 424. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

3L- 9/21/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LOCAL 808, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,

Petitioner,

- and -

CASE NO. C-4042

PORT WASHINGTON WATER POLLUTION CONTROL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED, that Local 808, International Brotherhood of Teamsters, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Sewer Servicer, Laborer, Senior Sewer Serviceman, Sewer Plant Attendant and Plant Operator.

Excluded: Director of Operations, Operations Foreman, Manager, Foreman, Clerical, including the Sewer Plant Attendant in the Office of the Director of Operations, and all other employees of the District.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 808, International Brotherhood of Teamsters, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any other question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 21, 1993
Brooklyn, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member